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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203541
Party	Plaintiff Mr. Andre D, Rossouw
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 85358119  
Mark: GOOGLE+

Andre Rossouw (Opposer)	)	
	)	
vs.	)	Opposition No. 91203541
	)	
Google Incorporated (Applicant)	)	

**OPPOSER (ANDRE ROSSOUW) RESPONSE TO GOOGLE INC. MOTION TO DISMISS  
OPPOSITION FILED ON GOOGLE PLUS APPLICATION**

### **Table Of Contents**

Page 1.	(1) FOREWORD (Issues regarding manner of service) (a &b)
	(2) ISSUES REGARDING IDENTITY OF OPPOSER (a,b,c,)
	(3) ISSUES REGARDING PURPORTED CLAIMS (a,b,c)
Page 2.	(1) ISSUES REGARDING CASE CITE (a,b,c,d)
	(2) PERTAINING TO MARK DIMINISHMENT (a,b,c)
Page 3.	(1) DEFENDANT ALLEGATIONS (terrorem) (a,b)
	(2) DEFENDANT CLAIMS TO INFAMOUS RIGHTS (a,b)
Page 4.	(1) REGARDING EXAMINER LETTER OF PROTEST (a)
	(2) REGARDING DEFENDANTS RESPONSIBILITY IN TRADEMARK SEARCH (a)
	(3) REGARDING DEFENDANTS “IMMATERIAL CLAIMS (a,b)
	(4) IN CLOSING

**(Andre Rossouw) hereby responding to “motion to dismiss opposition” filed before the TTAB by Google Inc.**

**(1) Foreword:**

(a) First, the agreement between opposer and defendant representation was to communicate via electronic means (email) and this is not adhered to by new representation of defendant, opposer can not “guess” to sudden change of representation by defendant or suffer for defendant's new representation NOT studying all communications and agreements thus far between opposer and defendant, and kindly request that defendant's new representation be held to that agreement as per evidence in the actual opposition filed before the board with receipt attached thereto..

(b) Further its opposer's stance that issues raised by the “motion to dismiss” are unfounded and rather seems a desperate attempt by defendant to undermine the validity of the opposition filed before the BOARD.

**(2) ISSUES RAISED IN MOTION REGARDING IDENTITY:**

(a) The “identity” of opposer on record is CLEAR as to the OWNER of the trademark being one Andre Rossouw and GWI was indeed the Company also owned by Andre Rossouw (Nevada Record per defendant's evidence) at the time of application of the Googabox mark and GWI was simply brought into the equation as this was the company owned by Andre Rossouw at the time of filing and that the mark was to be used under the GWI umbrella. The Googabox mark was NEVER quoted, referred to OR as of record indicative as being “owned” by GWI per se, and therefore it should be clear that the mark belongs to Andre Rossouw (individual) as of record, thus makes Andre Rossouw the opposer to the Google Plus mark. I, WE, AND US simply points to the workforce developing mark.

(b) An explanation as to why GWI was abandoned as umbrella company is irrelevant and opposer requests such with prejudice.

(c) The issue to “who is the owner” of the mark is as absurd as it sounds and if the defendant actually has taken the time to view the record there-of as meticulously recorded by the Trademark Office (TESS) 77270033 ] it should have been clear to the defendant who the owner of record is and raising an issue such as this mirrors a “grabbing at straws” desperation again in an effort to undermine the validity of the opposition filed before the BOARD.

**(3) ISSUES REGARDING PURPORTED CLAIMS**

(a) The “nature of purported claims” again an issue raised by the defendant as absurd as it sounds, as the brief in complaint served upon defendant CLEARLY outlines the objective behind the opposition thus it comes across as to not have been properly examined by the defendant as it clearly explains the “nature” to be one of “similar sounding marks” promoting the same product (Social Networking) therefore confusion and “mark potency loss” on opposer side and would be plausible as fact amongst consumers seen as a “simulating” mark rather than ORIGINAL and preceding the Google Plus mark application, defendant had and still has a social networking site called ORKUT associated with the Google name and prior to the filing of the Google Plus mark opposer had no problem arising to confusion however adding the “plus” symbol to their infamous mark “Google” changes the whole spectrum as the pronunciation changes completely to the extend of sounding too similar to the Googabox mark. The argument concerning the words “GOO” GOOG” and GOOGA” was put forth to prevent any assumption and possible argument to be made by defendant that Googabox is “riding the coattails of Google”

(b) The argument here is that the mark “Google” is indeed SO famous that it is now in dictionary recognized as a WORD in its own right meaning “search” and if true should not be misspelled or changed for said meaning, and if so would not make sense, therefore Googabox could NEVER be mistaken for the word Google, however the word or mark “Googleplus” as a whole is the contrary regardless of containing the infamous mark “Google” being it SOUNDS too close to Googabox promoting the same product as would not be the case in “ORKUT” which is the Google social network and was at the time of the Googabox mark application, and although “plus” and “box” do not sound exactly alike, when the two marks as a WHOLE are placed together and said together they share TOO many characteristics, same syllables, and sound Googleplus/ Googabox

(c) The argument also dances around the “classes” which these marks are promoting, therefore the fact that even being unique, the mark Google is not automatically allowed to add any words onto it creating new sounding marks to continue counting for its uniqueness, especially when the new mark ends up sounding like another mark, hence they STILL have to apply for the use of new mark.

#### (1) ISSUES REGARDING CASE CITE

##### **As pertaining to the case cite so readily introduced by the defendant:**

(a) Although case citing seems extravagant the opposer is of opinion for it to be wrongfully symbolizing knowledge and the opposer argues the constant change in law and constant case contradictory in record to be plentiful and evidence thereof, however will address the particular case cited by the defendant entity.

(b) The bar indeed was raised in this particular cited case however it is quite known that many courts do NOT adhere to that fact as decisions of courts original in ruling are almost always due to cases never before dealt with hence the “case by case” standard was adopted by most courts as many cases are unique of nature in their own right, so it is fair to say that many courts still do not adhere to this particular case ruling and new laws and rulings shall undoubtedly be created in the future.

(c) Even if we were to dissect the reasoning behind this particular case ruling it most likely can not be applied to THIS particular case with clarity as the two cases are very dissimilar, if we were to adhere to a “case by case” basis in this instance.

(d) The term “plausible beyond a reasonable doubt” sums up the ruling on this particular case in opposer's opinion and speculated in “defendants” opinion as well thus according to this ruling arguments should be accompanied by clear evidence above the “speculative evidence” spectrum. Although opposer leans more in favor of the “case by case” standard opposer will nevertheless address this particular raised bar of convincing evidence.

#### (2) PERTAINING TO MARK DIMINISHMENT

(a) The question is WHY does opposer feel he will be harmed beyond a reasonable doubt by the registration allowed to the mark Googleplus, and WHY opposer feels he is entitled to the mark Googabox awarded to him in Dec 2008 to promote this particular product social networking: The latter has already been explained, the opposer was first of use and proved to be in commerce and much time and money was spend on the design/ code and eventual beta testing on the platform.

(b) It is a known fact that a name could determine the success of a product and the mark Googabox to opposers belief is indeed such a name, as its very meaning and pronunciation is very strong to our cause. The word is broken down as Goo=sticky, GA=General Assembly, Box=Container meaning “Sticking together in a General Assembly Contained as ONE (in a box) people sticking together as one, such is our strength and going to be our strength, the belief in opposer's name is the very fundamental

reason for the drive to turn the mark into a success story. (the defendant may want to ask themselves why THEY deemed it important to compose the right name for themselves) This should be factual. So if indeed the Googleplus mark is allowed to be registered and used in competition to Googabox as a **social network** it would most definitely “diminish” the potency and value of the Googabox mark because of the similarity in sound and pronunciation (unless its the defendants stance that the two marks don't sound similar, which would be absurd)

(c) Social networks are as in fact VERY competitive as evidence shows how they come and go and sites such as “friendster” “myspace” “facebook” are already in fierce competition even with names that DON'T sound similar, so imagine the dismay and disregard for a site with a name sounding like the name of another? This should be factual beyond a reasonable doubt. (the defendant may ask themselves why ORKUT did not succeed in the United States or can stand against sites such as “my space” and “facebook” yet it provided what “facebook” provides, the opposer believes a bad choice of name to be the reason and again factual beyond a reasonable doubt, that Googabox would be harmed indeed by another name similar in sound, promoting the same product, especially when Googabox is up against a company with unlimited promotional funds.

#### (1) DEFENDANT ALLEGATIONS (terrorem)

(a) The defendant shamelessly asserts that opposer is without merit and “takes up the time of a number of people” and further asserts an “in terrorem increment of the settlement value” and in doing so fails to imagine the WORK, TIME and SACRIFICE that MUST have been put forth to accomplish the design and build behind the mark Googabox and does not know the plans and dreams and work ready to be launched put forth by the opposer, and so should be deemed as shameless and null in such remarks. The opposition also reflects the financial loss to be suffered in the future as calculated by “comparable” entities of this nature, and adds that preparation and good planning can take years before success is achieved and can not be jeopardized by allowing defendant to bar that possibility and so OPPOSER obtained the registered mark exactly for that purpose, to build and be successful and should be allowed the allotted time by the government to do so using the mark awarded “Googabox”.

(b) Opposer has already explained in the opposition brief as well that opposer could NEVER for-see that one day the defendant would decide to launch ANOTHER social network adding a “plus” to their name seeing they already had one “ORKUT” so that should put the assertion of an “in terrorem increment of the settlement value” allegation to rest.

#### (2) DEFENDANT CLAIMS TO INFAMOUS RIGHTS

(a) The defendant rightfully claims that the mark Google is infamous, factual and true, however does not mean they can add words TO IT as they please and not be subject to opposition. In the defendants “table” of registered marks opposer is not opposed to ANY of them as NONE of them resembles Googabox so the defendant again is trying to use their “infamous” status to monopolize all products by adding words onto their mark shown by their table of registered marks and going as far as saying they are allowed to ADD onto their unique mark ANY words as they please and so should be allowed to justify their stance of monopolizing and “pushing” their weight around, even going as far as:

(b) Stating that their + symbol is NOT to be pronounced as “PLUS” but should be seen as a “symbol” only, totally going against the trademark rules stating clearly that ALL symbols are deemed pronunciation applicable when it comes to similar sounding marks, and further the mark is also search-able with the whole “word” “plus” and so search-able on the TESS electronic search trademark records as well. And thus defendant again is trying to “dance around” the real issue at hand.

(1) REGARDING EXAMINER LETTER OF PROTEST

(a) The “examiner” may have “rejected the letter of protest however the “Trademark Commissioner” deemed the letter of protest credible with merits to bring it to the attention of the examiner and CLEARLY stated that the letter had the necessary merits to consider refusal of registration and the examiner had NO access to the contents thereof (see TESS database), for the defendant to even bring this issue in to play is absurd. This defendant should not be allowed to add onto their mark when hurting another mark in progress.

(2) REGARDING DEFENDANTS RESPONSIBILITY IN TRADEMARK SEARCH

(a) It was the defendants RESPONSIBILITY to do due diligence and opposers stance that defendant has NO excuse for “missing” the Googabox mark published in the Gazette as with certainty a company with their resources and finances have unlimited power to find and oppose marks which they feel are infringing to their own and yet they FAILED to find or see opposers mark when it was published, and if so should be cited as not to be at the expense of opposer, it is opposers stance that defendant most probably DID see the mark but felt at the time it had no merits to oppose, seeing they had not yet composed the Google Plus mark OR entertained the design of another social network at the time.

(3) REGARDING DEFENDANTS “IMMATERIAL CLAIMS

(a) Defendant raises the notion of “immaterial” and “impertinent” remarks regarding the words “goo” goog” and googa” however was raised by opposer as to eliminate ANY notion that Googabox ride the coattails of Google and to re-iterate that Googabox has NO problem with the Google mark by itself or ANY of the other registered marks except the Google+ mark which defendant is trying to imply the symbol somehow “exempts” the mark to be pronounced for what it is “GOOGLEPLUS”

**(b) It is plain for anyone to see that “plus” and “box” separately do not sound precise alike however when calculated together with the first 4 EXACT letters, the 3 EXACT syllables and the close resemblance of the “plus” and “box” SOUND with the “S” sound on the end when PRONOUNCED together these two marks sounds confusingly similar in their entirety promoting the SAME CLASS GOOGLEPLUS/ GOOGABOX thus causing opposers mark to loose its dynamics and power as it would be seen as SIMULATING the Googleplus mark.**

(4) IN CLOSING

Opposers remarks concerning “monopolizing” should be credible indeed if defendant insists to keep creating products with the notion they can ADD ANYTHING to their infamous name and sustain, even if it means harming another trademark in use already and as in this case sounding similar to the point of definite irreversible harm, and the questions comes to mind “How many social networks do they want?” Who's next to loose their mark potency due to this belief? All should be treated equally as one under the law and the rights of companies and individuals alike.

**Opposer hereby asks the BOARD respectfully to REJECT the defendants “motion to dismiss” WITH prejudice for one or all reasons above and to allow opposer to go forward with the opposition.**

Googleplus / Googabox (both social networks?)

Respectfully so submitted

Andre Rossouw  
(Owner Googabox)

PROOF OF SERVICE

I declare that:

I am the **OPPOSER**

I am party to the within cause; my business address is

7535 Whitsett Avenue, North Hollywood, CA, 91605

On the date indicated below I mailed (served) a true copy of ANDRE ROSSOUW's  
RESPONSE TO GOOGLE INC. MOTION TO DISMISS to the Law Offices of:

**FENWICK & WEST LLP  
801 CALIFORNIA ST.  
MOUNTAIN VIEW, CA 94041**

and particularly to the attention of Eric J. Ball esq. claiming to be the composer of  
said "Motion To Dismiss" and claiming so thereof and claiming to be representative  
of Google Inc. Mountain View California

- ☒ **BY US MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following ordinary business practices. I am readily familiar with ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- ☐ **BY E-MAIL:** by mutual agreement between the parties, causing to be transmitted via e-mail the document(s) listed above to the addressee(s) at the e-mail address(es) listed above.
- ☐ **BY PERSONAL DELIVERY:** by causing to be personally delivered the document(s) listed above to the addressee(s) at the address(es) set forth above.

I declare under penalty of perjury that the foregoing is true and correct, and that  
this declaration was executed at 7535 Whitsett Avenue, North Hollywood, CA, 91605

\_\_\_\_\_  
Date Served

\_\_\_\_\_  
ANDRE D. ROSSOUW

Opposition No. 91203541  
Application No. 85358119